{deleted text} shows text that was in SB0109 but was deleted in SB0109S02.

Inserted text shows text that was not in SB0109 but was inserted into SB0109S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Curtis S. Bramble proposes the following substitute bill:

#### SMALL EMPLOYER RETIREMENT PROGRAM

2017 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Todd Weiler House Sponsor:

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#### **General Description:**

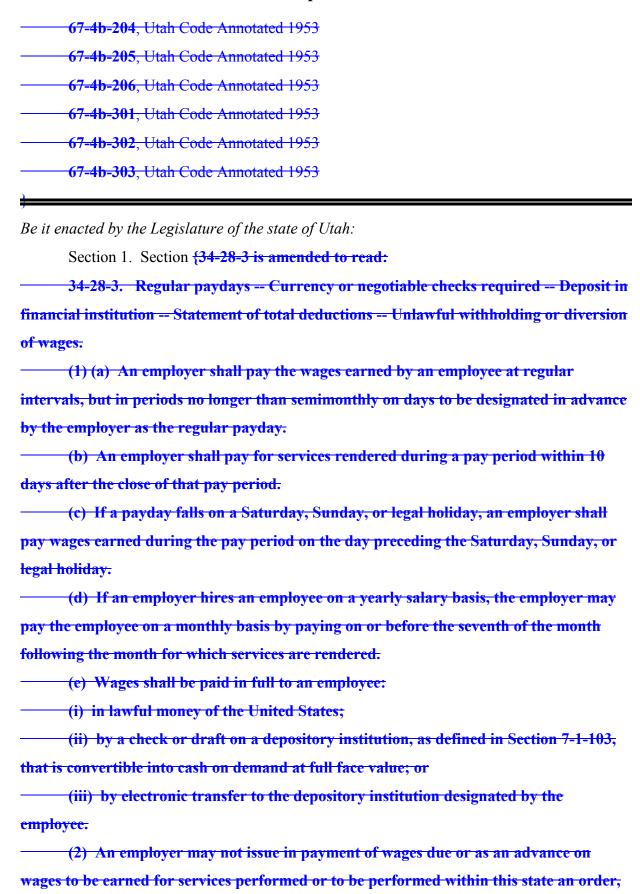
This bill {modifies} enacts provisions {related to the state treasurer establishing the Utah Voluntary Employee Retirement Accounts Program and creating certain tax credits} relating to tax credits for small employers.

#### **Highlighted Provisions:**

This bill:

- {addresses permissible diversion of wages;
- creates nonrefundable tax credits for employer participation in certain} defines
   terms; and
- <u>establishes an income tax credit for certain small employers that offer employees</u>
  <u>access to a qualified retirement {plans;</u>
- enacts the Utah Voluntary Employee Retirement Accounts Program, including:

• defining terms;
• requiring liberal construction and compliance with federal and state law;
• directing the state treasurer to create the program;
<ul> <li>providing for the administration of the program, including authorizing contraction</li> </ul>
with one or more providers of services;
• providing for receipt of grants, gifts, or money to address the costs of the
program;
• addressing education about the program;
• requiring certain information to be provided;
• addressing confidentiality of information;
<ul> <li>providing for participation by small nongovernmental employers or employees</li> </ul>
of nongovernmental employers;
• requiring annual notification related to participation; and
• requiring reports to participating employees and participating employers; and
→ makes technical changes plan.
Money Appropriated in this Bill:
None None
Other Special Clauses:
None
Utah Code Sections Affected:
<del>{AMENDS:</del>
34-28-3, as last amended by Laws of Utah 2014, Chapter 188
†ENACTS:
<b>59-7-621</b> , Utah Code Annotated 1953
<b>59-10-1038</b> , Utah Code Annotated 1953
<b>67-4b-101</b> , Utah Code Annotated 1953
67-4b-102, Utah Code Annotated 1953
67-4b-103, Utah Code Annotated 1953
67-4b-201, Utah Code Annotated 1953
67-4b-202, Utah Code Annotated 1953
67-4b-203, Utah Code Annotated 1953



<del>check, or draft unless:</del>
(a) it is negotiable and payable in cash, on demand, without discount, at a
depository institution; and
(b) the name and address of the depository institution appears on the instrument
(3) (a) Except as provided in Subsection (3)(b), an employee may refuse to have
the employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by
filing a written request with the employer.
(b) An employee may not refuse to have the employee's wages deposited by
electronic transfer under Subsection (3)(a) if:
(i) for the calendar year preceding the pay period for which the employee is being
paid, the employer's federal employment tax deposits are equal to or in excess of
<del>\$250,000; and</del>
(ii) at least two-thirds of the employees of the employer have their wages
deposited by electronic transfer.
(c) An employer may not designate a particular depository institution for the
exclusive payment or deposit of a check or draft for wages.
(4) If a deduction is made from the wages paid, the employer shall, on each
regular payday, furnish the employee with a statement showing the total amount of each
<del>deduction.</del>
(5) An employer licensed under Title 58, Chapter 55, Utah Construction Trades
Licensing Act, shall:
(a) on the day on which the employer pays an employee, give the employee a
written or electronic pay statement that states:
(i) the employee's name;
(ii) the employee's base rate of pay;
(iii) the dates of the pay period for which the individual is being paid;
(iv) if paid hourly, the number of hours the employee worked during the pay
<del>period;</del>
(v) the amount of and reason for any money withheld in accordance with state or
federal law, including:
(A) state and federal income tax;

(B) social security tax;
(C) Medicare tax; and
(D) court-ordered withholdings; and
(vi) the total amount paid to the employee for that pay period; and
(b) comply with the requirements described in Subsection (5)(a) regardless of
whether the employer pays the employee by check, cash, or other means.
(6) An employer may not withhold or divert part of an employee's wages unless:
(a) the employer is required to withhold or divert the wages by:
(i) court order; or
(ii) state or federal law;
(b) the employee expressly authorizes the deduction in writing;
(c) the employer presents evidence that in the opinion of a hearing officer or an
administrative law judge would warrant an offset; [or]
(d) subject to Subsection (8), the employer withholds or diverts the wages:
(i) as a contribution of the employee under a contract or plan that is:
(A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue
Code; and
(B) established by the employer; and
(ii) the contract or plan described in Subsection (6)(d)(i) provides that an
employee's compensation is reduced by a specified contribution:
(A) under the contract or plan; and
(B) that is made for the employee unless the employee affirmatively elects:
(I) to not have a reduction made as a contribution by the employee under the
contract or plan; or
(II) to have a different amount be contributed by the employee under the contract
or plan[.]; or
(e) in accordance with Title 67, Chapter 4b, Utah Voluntary Employee
Retirement Accounts Program.
(7) An employer may not require an employee to rebate, refund, offset, or return
a part of the wage, salary, or compensation to be paid to the employee except as provided
in Subsection (6).

- (8) (a) An employer shall notify an employee in writing of the right to make an election under Subsection (6)(d).
- (b) An employee may make an election described in Subsection (6)(d) at any time by providing the employer written notice of the election.
- (c) An employer shall modify or terminate the withholding or diversion described in Subsection (6)(d) beginning with a pay period that begins no later than 30 days following the day on which the employee provides the employer the written notice described in Subsection (8)(b).
- (9) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.
- Section 2. Section 59-7-621 is enacted to read:
- 59-7-621. Nonrefundable tax credit for employer's participation in Utah Voluntary Employee Retirement Accounts Program or other retirement plan.

  359-7-621 is enacted to read:
- <u>59-7-621. Nonrefundable tax credit for small employer's participation in retirement.</u>
  - (1) As used in this section:
- (a) "Participating employer" means a small {nongovernmental} employer that offers a qualified plan to the employer's employees for voluntary enrollment.
- (b) "Qualified plan" means a retirement plan that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.
- (c) "Small employer" means an employer in the state that { elects to participate in the program in accordance with Section 67-4b-301.
- (b) "Program" means the Utah Voluntary Employee Retirement Accounts Program ereated in Section 67-4b-201.
- (c) "Small nongovernmental employer" means a nongovernmental employer who employs at least five and no more}:
  - (i) is a self-employed individual;
  - (ii) is a sole proprietor; or
- (iii) has fewer than 100 employees {in the state for each working day in each of 20 weeks or more in the current or preceding calendar year.

- (2) (a) who actively work in the state.
- (2) For a taxable year {beginning}that begins on or after January 1, 2018, and {on or } the fore {December 31} January 1, {2018} 2020, a participating employer {or small nongovernmental employer} may claim a \$500 nonrefundable tax credit {as provided in this Subsection (2).
  - (b) Subject to the other provisions of this section, the tax credit is \$500:
- (i) (A) for the first year that the participating employer elects to participate in the program; or
- (B) for the first year that a small nongovernmental employer, that is not a participating employer, contracts to participate in a retirement plan for its employees that provides for payroll deductions; and
- (ii) for for the taxable year in which the participating employer for small nongovernmental employer receives a certificate in accordance with Section 67-4b-303 confirming that the first offers a qualified plan.
- (3) A participating employer {or small nongovernmental employer is eligible for a tax credit under this section.
- (3) A tax credit under this section } may not {be carried} carry forward or {carried} carry back a tax credit described in this section.

Section  $\frac{3}{2}$ . Section **59-10-1038** is enacted to read:

- <u>59-10-1038.</u> Nonrefundable tax credit for <u>small employer's</u> participation in <del>{Utah</del> <del>Voluntary Employee Retirement Accounts Program or other }</del>retirement<del>{ plan}</del>.
  - (1) As used in this section:
- (a) "Participating employer" means a small {nongovernmental employer in the state that elects to participate in the program in accordance with Section 67-4b-301.
- (b) "Program" means the Utah Voluntary Employee Retirement Accounts Program created in Section 67-4b-201.
- (c) "Small nongovernmental employer" means a nongovernmental employer who employs at least five and no more than 100 employees in the state for each working day in each of 20 weeks or more in the current or preceding calendar year.
- (2) (a) For a taxable year beginning on or after January 1, 2018, and on or before

  December 31, 2018, a participating employer or small nongovernmental employer may claim a

nonrefundable tax credit as provided in this Subsection (2).
(b) Subject to the other provisions of this section, the tax credit is \$500:
(i) (A) for the first year that the participating employer elects to participate in the
program; or
(B) for the first year that a small nongovernmental employer, that is not a participating
employer, contracts to participate in}employer that offers a qualified plan to the employer's
employees for voluntary enrollment.
(b) "Qualified plan" means a retirement plan {for its employees that provides for
payroll deductions; and
(ii) for which the participating employer or small nongovernmental employer receives
<u>a certificate in accordance with Section 67-4b-303 confirming that the participating employer</u>
or small nongovernmental employer is eligible for a tax credit under this section.
(3) A tax credit under this section may not be carried forward or carried back.
Section 4. Section 67-4b-101 is enacted to read:
CHAPTER 4b. UTAH VOLUNTARY EMPLOYEE RETIREMENT
ACCOUNTS PROGRAM
Part 1. General Provisions
67-4b-101. Title.
This chapter is known as the "Utah Voluntary Employee Retirement Accounts
Program."
Section 5. Section 67-4b-102 is enacted to read:
67-4b-102. Definitions.
As used in this chapter:
(1) "Board" means the Utah Voluntary Employee Retirement Accounts Program Board
<u>created in Section 67-4b-202.</u>
(2) "Fiduciary or commercial information" means information:
(a) related to any subject if the disclosure of the information:
(i) would conflict with a fiduciary obligation; or
(ii) is prohibited by an insider trading provision; or
(b) of a commercial nature, including information related to account holders.
(3) "Investment product" means a fixed or variable rate annuity, savings account,

certificate of deposit, money market account, bond, mutual fund, or another form of investment not prohibited by the Internal Revenue Code and authorized by the program.

(4) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a) or 408(b), Internal Revenue Code.

- (5) "Nonparticipating employer" means a small nongovernmental employer in the state that does not elect to participate in the program.
  - (6) "Participating employee" means an individual who:
- (a) is employed in this state by a small nongovernmental employer;
  - (b) chooses to have contributions made to an account in the program; and
  - (c) has at least \$1 in an account in the program.
- (7) "Participating employer" means a small nongovernmental employer in the state that elects to participate in the program in accordance with Section 67-4b-301.
- (8) "Program" means the Utah Voluntary Employee Retirement Accounts Program created in Section 67-4b-201.
- (9) "Small nongovernmental employer" means a nongovernmental employer who employs no more than 100 employees in the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
- Section 6. Section 67-4b-103 is enacted to read:
- 67-4b-103. Liberal construction -- Compliance.
- (1) This chapter shall be liberally construed so as to provide a tax-qualified retirement program for participating employers and participating employees.
- (2) The program shall comply with the Internal Revenue Code and other applicable federal and state law.
- (3) Notwithstanding the other provisions of this chapter, the state treasurer may not recommend or implement standards or requirements for the program if doing so would cause an IRA arrangement or other investment product offered under the program to be an employee benefit plan that would result in state or employer liability under}that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 \ \tau\) et seq.
  - (c) "Small employer" means an employer in the state that:
  - (i) is a self-employed individual;
  - (ii) is a sole proprietor; or

- (iii) has fewer than 100 employees who actively work in the state.
- (2) For a taxable year that begins on or after January 1, 2018, and before January 1, 2020, a participating employer may claim a \$500 nonrefundable tax credit for the taxable year in which the participating employer first offers a qualified plan.
- (3) A participating employer may not carry forward or carry back a tax credit described in this section.

in this section.

Section 7. Section 67-4b-201 is enacted to read:

Part 2. Program Created

(1) The state treasurer shall create the Utah Voluntary Employee Retirement Accounts

Program within the office of the state treasurer to provide a cost-effective group retirement

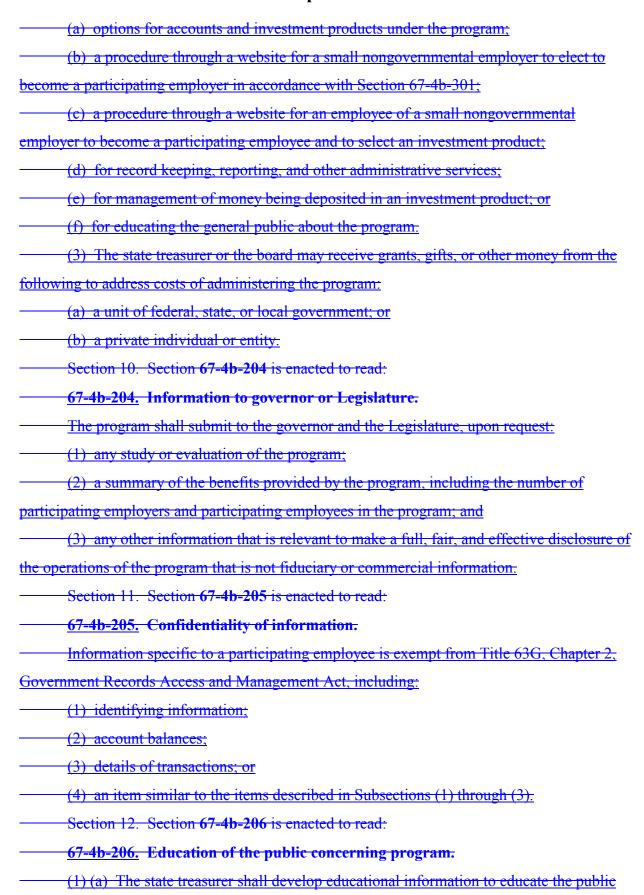
program for small nongovernmental employers in the state and employees of small
nongovernmental employers in the state.

<u>67-4b-201.</u> Program created -- State not liable -- Not public money.

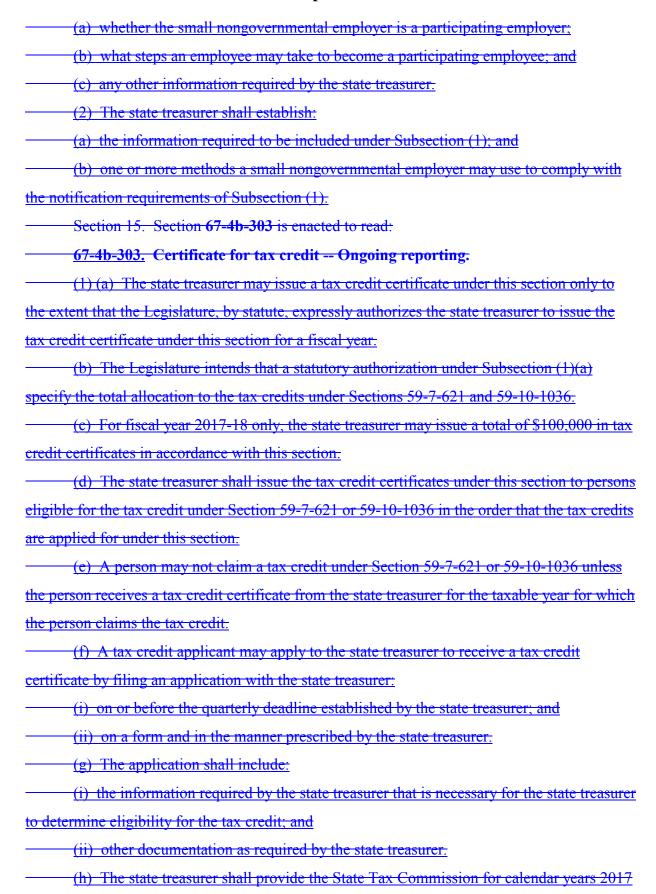
- (2) The program does not create or constitute a debt, obligation, or liability of the state.
- (3) Any contract entered into by the state treasurer or the board in connection with the program:
- (a) does not create or constitute a debt of the state and is solely an obligation of the program; and
  - (b) shall require the person contracting with the state treasurer to indemnify the state.
- (4) The corpus, assets, and earnings under the program are not public money of the state and are solely available to carry out the purposes of this chapter.
- Section 8. Section 67-4b-202 is enacted to read:
- <u>67-4b-202.</u> Utah Voluntary Employee Retirement Accounts Program Board.
- (1) There is created a Utah Voluntary Employee Retirement Accounts Program Board within the office of the treasurer, consisting of the following five members:
- (a) the state treasurer;
- (b) the executive director of the Department of Commerce or the executive director's designee; and
- (c) three individuals with experience in the financial industry related to retirement plans, appointed by the executive director of the Department of Financial Institutions.
  - (2) (a) Each appointment under Subsection (1)(c) is for a term of four years.

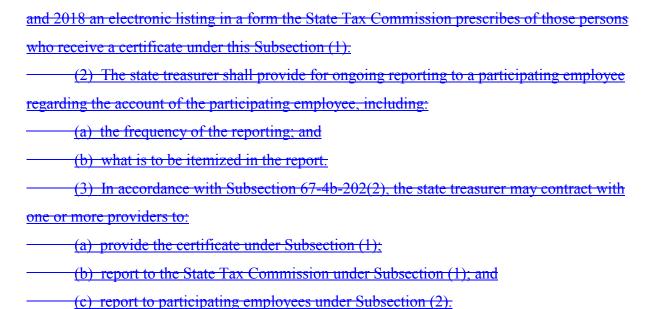
(b) A board member may not serve more than two consecutive terms. (c) The executive director of the Department of Financial Institutions shall, at the time of appointment or reappointment of a board member, adjust the length of a board member's term to ensure that the terms of the board members are staggered so approximately half of the board members described in Subsection (1)(c) are appointed every two years. (3) A board member described in Subsection (1)(c) serves until: (a) removed by the executive director of the Department of Financial Institutions; (b) the board member resigns; or (c) the board member's term expires and the executive director of the Department of Financial Institutions appoints the board member's successor. (4) When a vacancy occurs in the membership of the board for any reason, the executive director of the Department of Financial Institutions shall appoint a replacement for the remainder of the board member's unexpired term. (5) (a) The state treasurer is the chair of the board. (b) The chair of the board shall set the agenda for each board meeting. (6) (a) A majority of the board members constitutes a quorum. (b) The action of a majority of a quorum constitutes the action of the board. Section 9. Section 67-4b-203 is enacted to read: 67-4b-203. Administration. (1) The board shall develop standards and requirements for operation of the program consistent with this chapter and applicable federal regulations, including: (a) providing for an automatic deduction IRA; (b) procedures for payroll deductions and remittances; (c) procedures for a participating employee to make deposits into an account if the participating employee is employed by a nonparticipating employer; (d) procedures for portability or discontinuing participation in the program; and (e) procedures for a participating employee to increase or decrease the participating employee's contribution to an account or cease participation in the program, including providing for automatic increases in amounts deducted for an IRA. (2) The board shall, in accordance with Title 63G, Chapter 6a, Utah Procurement

Code, contract with two or more providers that provide:



# concerning the program. (b) In accordance with Subsection 67-4b-202(2), the state treasurer may contract with one or more providers to develop the educational information required by this section. (2) The following shall cooperate with the state treasurer to disseminate educational information developed under this section, either through distributing the educational information or including links to the educational information prominently on websites: (a) the Department of Workforce Services: (b) the State Tax Commission; (c) the Department of Commerce; and (d) the Avenue H web portal created by Section 63N-11-104 and administered by the Office of Consumer Health Services within the Governor's Office of Economic Development. Section 13. Section 67-4b-301 is enacted to read: Part 3. Participation 67-4b-301. Election to participate. (1) (a) A small nongovernmental employer in this state may elect to participate in the program if, as of January 1, 2018, the small nongovernmental employer does not offer an active retirement program for its employees before electing to participate in the program. (b) A participating employer shall comply with all program requirements, including making payroll deductions and remittances as required by the state treasurer. (2) A participating employer may elect to discontinue participation in accordance with program requirements. (3) (a) A small nongovernmental employer in this state is not required to participate in the program. (b) If an employee of a nonparticipating employer in this state elects to participate in the program, the participating employee shall make deposits in the participating employee's account in accordance with procedures established by the state treasurer, except that a nonparticipating employer may not be required to make payroll deductions and remittances. Section 14. Section 67-4b-302 is enacted to read: 67-4b-302. Information given to employees. (1) A small nongovernmental employer shall annually notify the small nongovernmental employer's employees of the following:





**Legislative Review Note** 

Office of Legislative Research and General Counsel}